December 18, 2017

By Email

The Honorable Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Pruitt.scott@epa.gov

Re: Request to Desist from Reinstatement of C2P2 Program and for Timetable to Complete Actions Required by the Office of Inspector General

Dear Administrator Pruitt:

The undersigned health, environmental, community, and public interest organizations are writing to express our strong opposition to the reinstatement of the Coal Combustion Partnership (C2P2) Program and to request that EPA complete the actions required by the U.S. Environmental Protection Agency's (EPA) Office of Inspector General's (OIG) Report concerning coal ash reuse.[1] Without substantial changes to the basic structure of the C2P2 program, the same abuses found in 2011 by the OIG will recur. We therefore request that the four agencies involved, the EPA, U.S. Department of Energy, Federal Highway Administration, and U.S. Department of Agriculture Agricultural Research Service, refrain from reinstatement of C2P2 unless and until significant changes are made to the program and the actions required by the OIG Report are completed and publicly disseminated. Further, we ask that EPA undertake an in-depth, rigorous evaluation of known structural fill and beneficial reuse sites to identify health and environmental impacts that have resulted from various reuse practices and to determine whether additional measures are necessary to protect public health and the environment from releases of pollutants from coal ash in these applications.

The 2011 OIG Report, "*EPA Promoted the Use of Coal Ash Products with Incomplete Risk Information,*" found that EPA deviated from accepted practices in its C2P2 program by promoting coal combustion residuals (CCR) reuse without evaluating safety risks.[2] Specifically, the OIG found EPA did not follow accepted and standard practices in determining the safety of the 15 categories of CCR beneficial uses it promoted through the C2P2 program. The OIG Report also found that without proper protections, CCR contaminants can leach into ground water and migrate to drinking water sources, posing significant public health concerns.[3] EPA

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[1] *See* Office of Inspector General, Report: EPA Promoted the Use of Coal Ash Products With Incomplete Risk Information, Report #11-P-0173, March 23, 2011, https://www.epa.gov/office-inspector-general/report-epa-promoted-use-coal-ash-products-incomplete-risk-information.
[2] *Id.*
[3] *Id.*

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concurred with the report's findings and recommendations and stated in 2011, the "protection of human health and the environment is a critical prerequisite to promoting the beneficial use of coal combustion residuals."[4]

EPA, however, has yet to follow one of the OIG Report's two recommendations. The OIG Report instructed EPA to determine if corrective action is warranted to address historical CCR structural fill sites. In response, EPA pledged that by the end of 2012, the agency would "provide milestones for determining whether further action is warranted" to address CCR fill sites.[5] EPA to date has provided no milestones and has taken no action to initiate cleanup at any fill site.

Nevertheless, there is abundant documentation that use of coal ash as fill can cause significant harm to health and the environment. There are numerous documented cases of contamination of water and air by structural fills, including a Superfund site in Indiana where a community's drinking water was contaminated by coal ash fill projects.[6] In fact, at least 22 separate reuse or structural fill sites have already been classified by EPA as confirmed damage cases, meaning they have had documented releases of pollutants above regulatory standards into the environment and/or had damage to health or the environment documented in scientific studies or administrative or court rulings.[7] *See* Table 1. At least 10 sites were classified as proven damage cases[8]—sites where pollutants exceeded health-based standards a sufficient distance away to indicate pollutants had migrated enough to that they could cause health concerns, or where scientific or administrative actions documented harm. This means that one quarter of all proven damage cases confirmed by EPA have occurred at coal ash fill sites.

Furthermore, the threat from unencapsulated (loose) coal ash applications is increasing. Examples of "unencapsulated" uses of loose coal ash and sludge include construction fill, fill used in surface coal mines, road base, blasting grit, snow and ice control, and agricultural uses. According to the American Coal Ash Association (ACAA), the U.S. rate of coal ash reuse in unencapsulated projects has risen substantially.[9] According to the ACAA, unencapsulated uses rose from about 34 percent of the total coal ash used in 2015 to approximately 42 percent in

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[4] Letter from Mathy Stanislaus, Assistant Administrator, to Arthur Elkins, Jr., Inspector General. Response to OIG Evaluation Report, *EPA Promoted the Use of Coal Ash Products with Incomplete Risk Information,* Aug 22, 2011, available at https://www.epa.gov/sites/production/files/2015-10/documents/11-p-0173_ig_comment_on_agencyresponse_12-9-2011.pdf .

[5] *Id.*

[6] *See* https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0508071

[7] For the full list of EPA confirmed damage cases that was released as a supporting document for EPA's final coal ash rule, *see* Alexander Livnat, U.S. Environmental Protection Agency, CCR Damage Case Database, Technical Support Document on Damage Cases, Docket #EPA-HQ-RCRA-2009-0640 (Dec. 18, 2014) (Document No. EPA-HQRCRA-2009-0640-12123) [hereinafter Damage Case Database].

[8] "*Proven damage case* means those cases with (i) Documented exceedances of primary maximum contaminant levels (MCLs) or other health-based standards measured in ground water at sufficient distance from the waste management unit to indicate that hazardous constituents have migrated to the extent that they could cause human health concerns, and/or (ii) where a scientific study provides documented evidence of another type of damage to human health or the environment (*e.g.,* ecological damage), and/or (iii) where there has been an administrative ruling or court decision with an explicit finding of specific damage to human health or the environment. In cases of co-management of CCRs with other industrial waste types, CCRs must be clearly implicated in the reported damage." 75 Fed. Reg. at 35,132; *see also* 80 Fed. Reg. at 21,452 (incorporating the Proposed Rule's definition).

[9] *See* American Coal Ash Association, CCP Production & Use Survey Reports, available at https://www.acaa-usa.org/publications/productionusereports.aspx.

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2016—an increase of more than 23 percent.[10] Use of coal ash as structural fill has increased by 8 percent alone in 2016. In contrast, the use of CCR in applications deemed safe by EPA (concrete and wallboard) decreased almost 14 percent.

In light of the substantial increase in unencapsulated use of coal ash and the EPA's failure to follow the OIG Report recommendation concerning such use, we ask that EPA finish the critical investigation into historical structural fills, and abandon any promotional partnership with industries profiting from the reuse of coal ash until such action is completed. In sum, EPA, or any other federal agency, must not promote coal ash reuse unless the safety of those practices has been fully evaluated and EPA has published peer-reviewed findings concluding that the specific reuses are safe for human health and the environment.

We respectfully request a response indicating when EPA will complete the required task described in EPA's 2011 letter.[11] We further request that any future discussions concerning C2P2 include a representative of the scientific community knowledgeable about the leaching of coal ash and at least one member of a public interest group. If you have any questions regarding the issues discussed in this letter, please contact Lisa Evans, Senior Counsel, Earthjustice at 781-631-4119, levans@earthjustice.org.

Signed,

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[10] *Id.*
[11] *See* fn, 4, supra, https://www.epa.gov/sites/production/files/2015-10/documents/11-p-0173_ig_comment_on_agencyresponse_12-9-2011.pdf

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Table 1. EPA-Confirmed Coal Ash Damage Cases at Fill Sites

	COAL ASH FILL SITES THAT HAVE CONTAMINATED GROUNDWATER (DOCUMENTED BY EPA)	STATE
1	Town of Pines Groundwater Plume	IN
2	Constellation Energy's BBSS S&G Quarries, Gambrills	MD
3	Lansing Board of Light & Water, North Lansing Landfill	MI
4	Swift Creek Structural Fill (ReUse/Full Circle Solutions)	NC
5	DOE Oak Ridge Y-12 Plant Chestnut Ridge Operable Unit 2	TN
6	Trans-Ash Coal Combustion Waste Fill	TN
7	VEPCO Chisman Creek	VA
8	WE Energies Oak Creek Power Plant Ravine Fill Collapse	WI
9	WEPCO Cedar Sauk	WI
10	WEPCO Highway 59	WI
11	George Neal Station North Landfill	IA
12	George Neal Station South Ash Monofill	IA
13	Dynegy Midwest Hennepin Power Station	IL
14	Joliet 9 Generating Station	IL
15	Powerton Plant	IL
16	K.R. Rezendes Ash Landfill (South Main Street Site), Freetown	MA
17	Cinergy/Cinn, Miamiview Landfill	OH
18	GenOn Portland Station Bangor Quarry Ash Disposal Site	PA
19	Battlefield Golf Course	VA
20	Lemberger Landfill	WI
21	WE Energies Oak Creek Power Plant Early Ash Disposal Area Fill Sites	WI
22	WEPCO Port Washington	WI

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